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No. 97-1239

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

GONZALEZ TRADING, INC. and JOSE M. BAEZA, JR.,

Petitioners,

vs.

YALE MATERIALS HANDLING CORPORATION,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should grant the petition for a writ of certiorari to address Petitioners' claim that they did not consent to proceed before a magistrate judge where the issue of consent was resolved by the district court and affirmed by the court of appeals based upon "ample evidence" of actual consent and applying established law.

PARTIES TO THE PROCEEDING

The original parties to the proceeding in the district court were General Trading, Inc. and Yale Materials Handling Corporation (Yale). Yale added the following parties as counterclaim defendants: Jose M. Baeza, Sr., Jose M. Baeza, Jr., Gonzalez Trading, Inc. and Javier Baeza. The following parties were added in post-judgment proceedings in the district court as transferees or garnishees: Power Depot, Inc., Michele M. Baeza, Encarnacion Gonzalez, Ocean Bank of Miami, First Florida Savings Bank, Barnett Bank of Broward County, N.A., Joe's Rental, Inc., America Discount, Inc., G.T. Americas, Inc., G.T. Corp., Franchel Enterprises, Inc., Gary Gerrard, P.A., GTE International, Inc., Compania Dominicana de Telefonso and Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A.

The parties to the proceedings in the Eleventh Circuit were General Trading, Inc., Jose M. Baeza, Sr., Jose M. Baeza, Jr., Gonzalez Trading, Inc., Javier Baeza, Power Depot, Inc., Michele M. Baeza, Encarnacion Gonzalez and Yale Materials Handling Corporation.

The parent company of Respondent Yale Materials Handling Corporation is NACCO Industries, Inc.

Yale Materials Handling Corporation has the following nonwholly owned subsidiaries: Sumitomo-Yale Company, Ltd., Shanghai Hyster Forklift Truck Company, Ltd., Hyster New England, Inc., NACCO Materials Handling S.R.L.

TABLE OF CONTENTS

	Page
Question Presented	i
Parties to the Proceeding	ii
Table of Contents	iii
Table of Citations	iv
Opinion Below	1
Statute at Issue	1
Statement of the Case	1
A. Yale Prevails On The Merits.	2
B. Yale Obtains Additional Post-Trial Judgments.	3
C. Petitioners Raise The "Lack Of Consent" Issue.	4
D. The Magistrate Judge, The District Court Judge And The Eleventh Circuit Reject Petitioners' Arguments.	5
Reasons for Denying the Writ	7
I. The Eleventh Circuit Did Not Rely On Estoppel Or Waiver Theories To Find That Petitioners Consented To Proceed Before A Magistrate Judge.	8

Contents

Page

II. Petitioners' Claim That There Was Not A Final Order Is Meritless And Was Not Raised Below. 9

III. The Result Is Fair 10

Conclusion 11

TABLE OF CITATIONS

Cases Cited:

General Trading, Inc. v. Yale Materials Handling Corp., 119 F.3d 1485 (11th Cir. 1997) 1, 6, 7, 8

Peretz v. United States, 501 U.S. 923 (1991) 8

Taylor v. Freeland & Kronz, 503 U.S. 638 (1992) 9

Youakim v. Miller, 425 U.S. 231 (1976) 9

Zobrest v. Catalina Foothills School District, 509 U.S. 1 (1993) 9

Statutes Cited:

28 U.S.C. § 636(b)(3) 8

28 U.S.C. § 636(c) 1, 5, 9

OPINION BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit (Pet. App. 25-65) is reported at 119 F.3d 1485.

STATUTE AT ISSUE

This case involves the application of 28 U.S.C. § 636(c), which provides that a civil action may, upon consent of the parties, be referred to a United States Magistrate Judge.

STATEMENT OF THE CASE

Petitioners Jose M. Baeza, Jr. (Baeza Jr.) and Gonzalez Trading, Inc. (Gonzalez) seek to have this Court make factual findings contradicting the unanimous findings of the magistrate judge, the district judge and the court of appeals panel that Petitioners did consent to proceed before the magistrate judge. The petition should be denied because the issue of consent was resolved based upon "ample evidence" of actual consent, and the Eleventh Circuit's decision merely applied established law to the factual findings.

As repeatedly determined below, Petitioners themselves proposed and willingly consented to the referral to the magistrate judge, and thereafter they knowingly and actively litigated before him without objection, until he made a series of decisions adverse to them. Only then did Petitioners, and numerous other parties to this action who have finally recognized reality and not sought review by this Court, first concoct the specious argument through new counsel that they and their prior counsel never had consented to the authority of the magistrate judge. After an exhaustive review of the extensive record, the Eleventh Circuit found this argument of appellants' new counsel "incredulous." *General Trading, Inc. v. Yale Materials Handling Corp.*, 119 F.3d 1485, 1496 (11th Cir. 1997).

The case does not present a conflict with a decision of any other court of appeals or of this Court. The record does not present any question of jurisprudential significance. At most, Petitioners have asserted that the Eleventh Circuit's decision to affirm both trial court judges and to reject Petitioners' disingenuous, *ex post facto* claims of lack of consent was premised on factual error. Such an assertion is not legitimate and does not present an issue warranting the exercise of this Court's discretionary jurisdiction.

A. Yale Prevails On The Merits.[1]

This case began in 1987 as a termination dispute between Respondent Yale Materials Handling Corporation (Yale), a manufacturer of forklift trucks, and its former dealer, General Trading, Inc. (GTI), following Yale's discovery of repeated acts of fraud by GTI. Yale also asserted counterclaims against GTI's owner, Jose M. Baeza, Sr. (Baeza Sr.), his two sons, Javier Baeza and Baeza Jr., and the Baezas' Puerto Rico company, Gonzalez, for fraudulent conveyances to avoid Yale's security interests and for damages under various theories.[2] Prior to trial, Yale's claim against Baeza Jr. was severed from the litigation for separate trial, but Baeza Jr. remained a party and participated in pre-trial and post-trial proceedings through his various attorneys.

A bench trial was held before District Judge Scott for 13 trial days over five separate sessions during the summer of 1990. In August 1990, with less than one day of trial remaining, Judge Scott *sua sponte* continued the trial to an undetermined later date and then abruptly resigned from the bench. The case was

1. Petitioners have omitted or misstated much of the procedural history of this case.

2. GTI, Baeza Sr., Javier Baeza, Baeza Jr. and Gonzalez are sometimes referred to herein as "counterdefendants."

reassigned to two successive district court judges and eventually was transferred over a year later to a fourth, District Judge William J. Zloch.

All of the parties were desirous of completing the trial as soon as possible. Judge Zloch candidly informed them that, notwithstanding the tortuous history of the case, his criminal docket precluded a civil trial by him for the foreseeable future. As a response to that dilemma, Petitioners' own trial counsel proposed completion of the trial before a magistrate judge, and all parties readily consented. The record shows confirmation of the consents by an order of Judge Zloch (with a seven day opportunity to withdraw consent) and thereafter at an oral hearing before Magistrate Judge Bandstra.

The trial was resumed before Magistrate Judge Bandstra on February 10, 1992. At its conclusion, Yale was awarded a judgment on its counterclaims against GTI and Baeza, Sr., and GTI was awarded a judgment against Yale on a bankruptcy issue (which now has been reversed by the court of appeals and has not been raised in the petition for certiorari). GTI and Baeza Sr. at first appealed the magistrate judge's decision on the merits, but they later abandoned any challenge to that decision.

B. Yale Obtains Additional Post-trial Judgments.

After entry of judgment on the merits, Yale, GTI and Baeza Sr. filed motions seeking attorneys' fees. On October 18, 1993, the magistrate judge issued a judgment awarding Yale its attorneys' fees and costs.

Yale's efforts to execute on its judgments soon revealed that Baeza Sr., with the assistance of his family, was engaged in an effort to make himself and GTI judgment proof. Supplemental proceedings in aid of execution were pursued in

the trial court, and the magistrate judge impleaded supplemental defendants Michele M. Baeza, Encarnacion Gonzalez and Power Depot, Inc. (Power Depot).[3] After conducting a lengthy evidentiary hearing, Magistrate Judge Bandstra entered, on April 12, 1994, further final judgments in favor of Yale and set aside various fraudulent transfers that had been made to Baeza Jr., Gonzalez, Javier Baeza, Michele Baeza and Encarnacion Gonzalez.[4]

C. Petitioners Raise The "Lack Of Consent" Issue.

After the entry of the magistrate judge's decision in the supplementary proceedings, virtually all of the counterdefendants and transferees fired their former counsel and engaged various new counsel. Initially, all of the counterdefendants and transferees filed motions for a new trial in connection with the supplementary proceedings. However, on April 8, 1994, Javier Baeza, Michele Baeza, Encarnacion Gonzalez and Power Depot filed a "Special Appearance for Purposes of Withdrawing Motions for Partial New Trial." In that document, each of those parties expressly accepted the judgments entered by the magistrate judge.

Shortly after expressly accepting the judgments against them, Javier Baeza, Michele Baeza, Encarnacion Gonzalez and Power Depot apparently shifted course a third time and filed another "special appearance" for the purpose of contesting the magistrate judge's jurisdiction. Similar motions were filed on behalf of GTI, Baeza Sr., Gonzalez and Baeza Jr. In these

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3. Michele Baeza, Encarnacion Gonzalez and Power Depot are sometimes referred to herein as the "transferees."

4. None of the parties challenged these judgments for Yale on appeal.

motions, those parties contended, for the first time, that they had not consented to anything that would have permitted the entry of the magistrate judge's final judgment on the merits, the final judgment on attorneys' fees and costs, the final judgments in the supplementary proceedings or any other order.

D. The Magistrate Judge, The District Court Judge And The Eleventh Circuit Reject Petitioners' Arguments.

On May 23, 1994, the magistrate judge entered an order denying the motions to vacate the judgments and orders he had entered. In that order, the magistrate judge found, *inter alia*, that each of the parties had actually consented to his exercise of Section 636(c) authority; that all were represented by counsel and had fully participated in the proceedings; and that none had raised any objection but all had waited until after the entry of the adverse judgments and orders to begin questioning the court's authority.

Contemporaneous with their raising of the "consent" issue with the magistrate judge, Gonzalez and Baeza Jr. also filed separately with the district judge a "Motion to Vacate Order of Referral." On October 24, 1994, District Judge Zloch entered an order dismissing the motion of Gonzalez and Baeza Jr., finding as a matter of fact that "there was explicit, voluntary consent by all of the parties to the above-styled cause, and that their consent was clear and unambiguous."

The counterdefendants and transferees filed a mandamus petition in the court of appeals and also appealed from both the magistrate judge's and the district court judge's orders denying their motions to vacate the judgments, all based on the alleged absence of consent.[5]

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5. The appeal from the district court's order was dismissed by the court of appeals for lack of jurisdiction on August 21, 1995, because the issues addressed by the district court were already the subject of the parties' pending appeals.

The Eleventh Circuit consolidated all of the pending appeals and entered its decision on August 22, 1997. On the consent issue, the court of appeals stated:

> After carefully reviewing the record, we readily conclude that there is ample evidence that GTI, Baeza, Sr., Gonzalez Trading, and Baeza, Jr. explicitly and unambiguously consented to appear before the magistrate judge.

119 F.3d at 1495. The court of appeals cited the following undisputed facts:

- The attorneys for these parties attended a status conference on November 20, 1991, where they presented to the magistrate judge a signed consent and stipulation to proceed before the magistrate judge to complete the trial. 119 F.3d at 1495.

- Baeza Jr.'s attorney acknowledged on the record at the November 20, 1991 status conference that her client consented to the proceedings before the magistrate judge. *Id.*

- With all parties represented at the November 20, 1991 status conference, the magistrate judge stated on the record that "apparently there is an agreed consent to have this case now to be completed . . . before me. Is that correct?" Without objection or contradiction by counsel for Petitioners, Yale's attorney answered in the affirmative, clearly expressing the view of all present. *Id.*

- The parties were directed by the district court, in its order of referral of the case to the magistrate judge, to file any objection to the order of referral within seven days. No party objected. *Id.*

- All of the parties participated in pre-trial and post-trial proceedings without objecting to the magistrate judge's authority. No objection was raised until May 1994, over two years after the conclusion of the trial, when Petitioners' fraudulent scheme began to unravel as the magistrate judge entered judgments setting aside fraudulent conveyances among the counterdefendants and transferees. 119 F.3d at 1496.

The court of appeals similarly had no trouble finding that the transferees had consented through their filing of a formal, written acceptance of judgment. The court of appeals found that these parties' express consent was "[c]learly encompassed" in the acceptance of judgment. 119 F.3d at 1496.

REASONS FOR DENYING THE WRIT

Petitioners raise no issue worthy of consideration by this Court. This case presents neither a conflict among the circuits nor an important jurisprudential issue. The issue raised by Petitioners was resolved based on the "ample evidence" of consent and on well-settled legal principles.

I.

THE ELEVENTH CIRCUIT DID NOT RELY ON ESTOPPEL OR WAIVER THEORIES TO FIND THAT PETITIONERS CONSENTED TO PROCEED BEFORE A MAGISTRATE JUDGE.

Petitioners incorrectly contend that, because the Eleventh Circuit referred to their failure to object to the magistrate judge during the course of the proceedings, the decision of the court of appeals was premised on theories of "estoppel" or "waiver." In fact, the court of appeals made clear in its opinion that it did not need to reach the issue of whether a failure to object constitutes a waiver of the consent requirement. The court of appeals stated at footnote 21 (119 F.3d at 1496):

> Because the parties clearly consented to the authority of the magistrate judge, we do not decide today the issue of whether a failure to object to the magistrate judge results in waiver of the consent requirement of § 636(c).

The court of appeals' decision was based solely on the ample evidence of consent — a factual determination that did not require the court of appeals to consider theories of estoppel or waiver.

In its opinion, the Eleventh Circuit cited *Peretz v. United States*, 501 U.S. 923 (1991), which held that a district court could lawfully delegate a felony *voir dire* proceeding to a magistrate judge under Section 636(b)(3), if the defendant failed to object. 501 U.S. at 935-37. Yale argued below in the alternative that, under *Peretz*, Petitioners' failure to object to the referral to the magistrate judge, when expressly invited to do so by the district judge's referral order, amounted to consent under Section

636(c). But the Eleventh Circuit did not reach that issue, finding express consent as a matter of fact from the record evidence. Therefore, Petitioners' claim that the Eleventh Circuit predicated federal subject matter jurisdiction on theories of estoppel and waiver is incorrect. That issue was not decided by the court of appeals.

II.

PETITIONERS' CLAIM THAT THERE WAS NOT A FINAL ORDER IS MERITLESS AND WAS NOT RAISED BELOW.

Petitioners contend here, for the first time in this litigation, that the magistrate judge's decision to sever Baeza Jr. for purposes of trial renders the judgments below non-final and invalidates his consent. The argument was not made in the court of appeals, or in any pleading to the magistrate judge or district court. Accordingly, it has been waived and should not be considered by this Court. *See Zobrest v. Catalina Foothills School District*, 509 U.S. 1, 8 (1993); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 646 (1992); *Youakim v. Miller*, 425 U.S. 231, 234 (1976).

Moreover, it defies logic for Petitioners now to question the finality of the judgments below. This is their appeal. Having taken an appeal from the judgments entered against them and prosecuted it in the Eleventh Circuit, Petitioners clearly acknowledged the finality of those judgments. They cannot undo the court of appeals' decision by now claiming their own appeal was defective.

III.

THE RESULT IS FAIR

Having asserted no legitimate basis to question the Eleventh Circuit's decision on the law or facts, Petitioners argue that the decision was fundamentally unfair. The argument is patently groundless.

As established below, Petitioners, along with the other counterdefendants and transferees in the same family, defrauded Yale. When Yale asserted claims to recover its losses from business transactions, Petitioners themselves sought a referral to the magistrate judge, willingly consented, and knowingly and actively litigated before him. When they lost on the merits, Petitioners attempted to avoid the judgments through fraudulent conveyances that were set aside by the magistrate judge. When their efforts to stymie the judicial process were finally defeated, they hired new lawyers who then disingenuously tried to rewrite the litigation's history by asserting that there never had been consent to the magistrate judge. Those *ex post facto* attacks by inventive, if unscrupulous, counsel were thoroughly denounced and rejected by the magistrate judge, the district court judge, and ultimately the Eleventh Circuit, which found "ample evidence" of "clear and unambiguous consent."

Through their unsavory tactics employed over ten years of litigation, Petitioners have managed to avoid paying for their perpetual and accumulated fraudulent conduct. The Eleventh Circuit's decision is, by any measure, entirely fair.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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